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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,131	06/20/2003	Mathias Kokot	1014-065US01	5964
72689 7590 07/01/2009 SHUMAKER & SIEFFERT, P.A. 1625 RADIO DRIVE, SUITE 300 WOODBURY, MN 55125				
EXAMINER MOORE JR, MICHAEL J				
ART UNIT		PAPER NUMBER		
2419				
NOTIFICATION DATE		DELIVERY MODE		
07/01/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

paiddocketing@ssiplaw.com

# Office Action Summary

## Application No.

10/601,131

## Applicant(s)

KOKOT ET AL.

## Examiner

MICHAEL J. MOORE, JR.

## Art Unit

2419

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-26, 28-40, 42-44, 47-53, 56-62, 65, 66 and 93-98 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 11-26, 28-32, 38-40, 44, 47-53, 60, 61 and 93-96 is/are allowed.
- 6) ☒ Claim(s) 33-37, 42, 43, 97 and 98 is/are rejected.
- 7) ☒ Claim(s) 7-9, 56-59, 62, 65 and 66 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/18/09 has been entered.

### ***Claim Objections***

2. Claims **7-9, 56-59, 62, 65, and 66** are objected to because of the following informalities:

Regarding claim **7**, on lines 5-6, "the network device" should be "the network layer device" in order to more precisely correspond to the previously recited claim language in this claim.

Claims **8 and 9** are objected to as being dependent upon claim **7** and having the same deficiency.

Regarding claim **56**, on line 11, the word "to" is missing after the word "according".

Claims **57-59** are objected to as being dependent upon claim **56** and having the same deficiency.

Regarding claim **62**, on line 5, "a network device" should be "a network layer device" in order to more precisely correspond to the subsequently recited claim language in this claim.

Regarding claim **65**, on line 4, "a device" should be "a subscriber device" in order to more precisely correspond to the subsequently recited claim language in this claim. Further, on line 12, the word "to" is missing after the word "according".

Claim **66** is objected to as being dependent upon claim **65** and having the same deficiency.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims **33-37, 42, and 43** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim **33** recites the limitation "the network layer device" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claims **34-37, 42, and 43** are rejected as being dependent upon claim **33** and having the same deficiency.

Amendments made by Applicant to claims **33-40, 42, 43, 62, 65, and 66** to obviate the rejections under 35 U.S.C. 112 2<sup>nd</sup> paragraph presented in the Final Office

Action are proper and have been entered. These particular rejections have been withdrawn.

***Claim Rejections - 35 USC § 101***

Amendments made by Applicant to claims **33-40, 42, 43, 62, 65, and 66** to obviate the rejections under 35 U.S.C. 101 presented in the Final Office Action are proper and have been entered. These particular rejections have been withdrawn.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims **97 and 98** are rejected under 35 U.S.C. 102(b) as being anticipated by Hoebeke et al. (EP 1134932A1) (hereinafter "Hoebeke") cited in Applicant's previously submitted IDS. *Hoebeke* teaches all of the limitations of the specified claims with the reasoning that follows.

Regarding claim **97**, "receiving a request via a network layer device for a multimedia service from a subscriber device" is anticipated by the network access server (network layer device) that receives an IGMP join request (request for multimedia service) from a subscriber as spoken of on page 4, column 6, lines 17-19.

Lastly, "sending a control message from the network layer device to a data link layer device via an Ethernet control channel to configure a control object stored by a data link layer device with the network layer device to control the data link layer device

to provide data link layer functionality in accordance with the request" is anticipated by the network access server (network layer device) that informs the network terminal device (data link layer device) via the multicast protocol channel (Ethernet control channel) that a particular subscriber is to receive multicast data, and the subsequent channel association (configuring control object) carried out in the network terminal as spoken of on page 4, column 6, lines 14-30.

Regarding claim **98**, "sending the control message via a virtual local area network that is reserved for transmission of the control message" is anticipated by informing the network terminal device (data link layer device) via the multicast protocol channel and local network LN (virtual local area network connection) that a particular subscriber is to receive multicast data as spoken of on page 4, column 6, lines 14-30.

***Allowable Subject Matter***

8. Claims **1-9, 11-26, 28-32, 38-40, 44, 47-53, 56-62, 65, 66, and 93-96** are allowable over the prior art of record.
9. Claims **33-37, 42, and 43** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
10. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims **1-9, 11-26, 28-32, 44, 47-53, 56-61, and 93-96**, these claims are allowable for the reasons indicated in the Final Office Action.

Regarding *amended* claim **38**, *Fulp* teaches the (re)negotiation for bandwidth resources (QoS) by a user (subscriber device) through the sending of a request to switches in a particular route as spoken of on column 14, lines 53-55.

*Fulp* also teaches the switches (data link layer devices) that receive the user request and accordingly make an adjustment to the allocation of bandwidth resources to the particular user as spoken of on column 14, lines 55-66.

*Fulp* as well as the other prior art of record does not teach "a programmable processor of a network layer device to: receive a request for transmission of packets according to a quality of service class from a subscriber device; and dynamically configure a quality of service profile stored by a data link layer device for a layer-2 link between the data link layer device and the subscriber device to control the data link layer device to facilitate packet transmission for the subscriber device via the layer-2 link according to the requested quality of service class".

Regarding claims **39 and 40**, these claims are further limiting to *amended* claim **38** and are thus also allowable over the prior art of record.

Regarding *amended* claims **62 and 65**, these claims are now allowable for reasons similar to claims **44 and 47**, respectively.

Regarding claim **66**, this claim is further limiting to *amended* claim **65** and is thus also allowable over the prior art of record.

### ***Response to Arguments***

11. Applicant's arguments with respect to *amended* claims **38-40** have been fully considered and are persuasive. The prior art rejections of these claims have been withdrawn.

12. Applicant's arguments filed 3/18/09 regarding *amended* claims **97 and 98** have been fully considered but they are not persuasive.

Regarding *amended* claims **97 and 98**, Applicant argues that *Hoebeke* does not teach or suggest "sending a control message from the network layer device to a data link layer device via an Ethernet control channel to configure a control object stored by a data link layer device with the network layer device" as claimed. Applicant further argues that the NAS informs the CPNT that a particular subscriber is to receive particular multicast data via a multicast protocol channel (AVCC) of an ATM virtual packet-switched access network AN, and not an Ethernet control channel.

However, it is held that the multicast protocol channel (AVCC) of *Hoebeke* may be considered an "Ethernet control channel" in light of the disclosure of *Hoebeke* and the current claim language, as *Hoebeke* does teach where the local network LN utilizes the Ethernet protocol as spoken of on page 3, column 4, paragraph 17, and where the multicast protocol channel (AVCC) is utilized to notify the CPNT (located in the LN) that a particular subscriber is to receive particular multicast data. Therefore, the multicast protocol channel (AVCC) may be considered a control channel that provides multicast service to an Ethernet local network LN. Using this interpretation, it is held that *Hoebeke* teaches the above limitations in question.

### ***Conclusion***



Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. MOORE, JR., whose telephone number is (571)272-3168. The examiner can normally be reached on Monday-Friday (7:30am - 4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj Kumar can be reached on (571) 272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Moore, Jr./  
Primary Examiner, Art Unit 2419

